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of the rents and profits pending foreclosure. No notice of this action was given to the prior mortgagees. A receiver was appointed who, subsequent to the foreclosure of prior mortgages, filed a bill to account. In an action to determine the disposition of the fund collected by the receiver, *held*, that the fund belonged to the plaintiff. *Sullivan v. Rosson* (N. Y. Ct. of App. 1918) 9 Daily Record, No. 93.

Since a mortgagor in possession is entitled to rents and profits until entry by the mortgagee, the latter has no inherent right to the benefit of such rents even after default. *Teal v. Walker* (1884) 111 U. S. 242, 4 Sup. Ct. 420. The appointment of a receiver for the benefit of a mortgagee after default would seem to amount to a compulsory assignment of the rents and profits in aid of the security. See 12 Columbia Law Rev. 82. The right, therefore, to the appointment of a receiver after default in the conditions of the mortgage depends, in all jurisdictions, upon the equitable consideration that the retention of possession by the mortgagor would be detrimental to the mortgage security. *Land Title & Trust Co. v. Kellogg* (1907) 73 N. J. Eq. 524, 68 Atl. 80; see *New York Bldg. Loan Banking Co. v. Begly* (1902) 75 App. Div. 308, 78 N. Y. Supp. 169. The basis for this relief is the apparent inability of the mortgagor to redeem and the insufficiency of the security, or acts impairing the secured property. *Land Title & Trust Co. v. Kellogg*, *supra*; 3 Jones, Mortgages (7th ed.) § 1516. However, in a jurisdiction where the first mortgagee has the legal title, the courts of equity are loath to grant this extraordinary relief, since the mortgagee has his remedy at law by ejectment. Jones, *op. cit.* § 1520. But, since a subsequent mortgagee has not this remedy, being the holder of an equitable interest only, less proof is necessary to entitle him to the appointment of a receiver. *Cortleyeu v. Hathaway* (1855) 11 N. J. Eq. 39. In a lien jurisdiction, where the mortgagee has no right to the property except by foreclosure, courts of equity have been uniform in permitting the appointment of a receiver upon the same equitable considerations. *Marshall, etc., Bank v. Cady* (1899) 75 Minn. 241, 77 N. W. 831; *Schreiber v. Carey* (1880) 48 Wis. 208, 4 N. W. 124. This rule has also been applied where a subsequent mortgagee has been more diligent than the prior incumbrancer in securing this relief. *Kroehle v. Ravitch* (1911) 148 App. Div. 54, 132 N. Y. Supp. 1056. The subsequent mortgagee obtains a specific lien on the rents collected, superior to any claim of the prior mortgagee, to be applied in paying off the debt of the one for whose benefit the receiver was appointed. *Ranney v. Peyser* (1880) 83 N. Y. 1; *Goddard v. Clarke* (1908) 81 Neb. 373, 116 N. W. 41. Although the prior mortgagee may upon motion have the receivership extended for his own benefit, until this is done the receiver is accountable only to the subsequent mortgagee. *Ranney v. Peyser*, *supra*. Therefore, the principal case seems to have been decided in accord with the authorities on this point.

MORTGAGES—WAIVER OF DEFAULT AFTER ACCELERATION OF MATURITY—AUTHORITY OF APPOINTEE OF COURT.—The defendant guaranteed the payment by the principal debtor of certain mortgage bonds. The principal debtor defaulted in paying interest and thus accelerated the optional maturity of the bonds. The plaintiffs, owners of the bonds, secured judgment against the guarantor for the amount of the prin-

principal and interest. Meanwhile, by order of court, the bonds had been deposited temporarily with a "trustee", who under the order was directed to allow the action against the guarantor to proceed, but to take no other action upon the bonds. After judgment against the guarantor the "trustee" accepted payment of all the interest due, and thereupon the guarantor sought to be relieved from the judgment. *Held*, the guarantor was not entitled to relief. *Pomeroy v. Hocking Valley Ry.* (App. Div. 1st Dept. 1918) 59 N. Y. L. J. 201.

An acceptance of overdue interest after the maturity of the principal has been accelerated by the default waives the right to collect the principal immediately, *Lawson v. Barron* (N. Y. 1879) 18 Hun. 414; see *Rathbone v. Forsyth* (1916) 171 App. Div. 26, 156 N. Y. Supp. 888, and, therefore, such an acceptance by the creditor is, in effect, an extension of the time of payment. An extension of time given the principal debtor discharges the surety, 1 Brandt, Suretyship & Guaranty (3rd ed.) § 376, even if judgment has already been given against the surety. *Gipson v. Ogden* (1885) 100 Ind. 20; cf. *Malanaphy v. Fuller & Johnson Mfg. Co.* (1904) 125 Iowa 719, 101 N. W. 640. In order, however, that such a payment of interest have the effect of restoring the original time of maturity, it is necessary that it be made to a person authorized to receive it. Cf. *Grussy v. Schneider* (N. Y. 1875) 50 How. Pr. 134. While, in the instant case, the custodian of the bonds is designated as a "trustee" and while a trustee, being the holder of the legal title, would have authority to waive the default, the description of the holder as a "trustee" is not conclusive, 1 Mechem, Agency (2nd ed.) § 43, and the real status of the holder may be made the subject of inquiry. Therefore, it seems that the possessor of the bonds was a mere agent of the court, cf. *Perkins v. Dwight* (1873) 4 S. C. 360, and had no authority to waive the default. Therefore, the payment was not binding upon the creditor, *Smith v. Kidd* (1877) 68 N. Y. 130, and since there was no valid extension of time, cf. *Karcher v. Gans* (1900) 13 S. D. 383, 83 N. W. 431, the surety was not released.

PARTNERSHIP—ACTION BETWEEN PARTNERS.—The plaintiff filed a bill for the dissolution of a partnership, an accounting, and a decree for one-half of the cost of machinery which the plaintiff had installed at his own expense and which the defendant had agreed to repay either out of his individual funds or out of the profits of the partnership. *Held*, only a decree for the balance due upon a general accounting could be had. *Jones v. Rose* (W. Va. 1917) 94 S. E. 41.

One partner may maintain a common law action against his co-partner for damages for breach of a promise to furnish capital. *Lindley*, Partnership (8th ed.) 632; *Venning v. Leckie* (1810) 13 East 7; see *Brown v. Tapscott* (1840) 6 Mess. & W. 118, or to repay an advance of capital. *Bates*, Partnership §§ 875, 876; see *Smith v. Kemp* (1892) 92 Mich. 357, 52 N. W. 639. In the instant case the plaintiff could not have maintained such an action since the defendant by his promise had an election to repay the plaintiff out of his share of the profits, the determination of which would have necessitated an accounting. Instead, the plaintiff asked for a dissolution and a final accounting. Where such relief is sought a personal decree in favor of one partner will only be rendered for the amount found due from the other partner upon a complete settlement of all partnership affairs. *Mackenna v. Parkes* (1867) 36 L. J. Ch. (N. S.) 366; *Bates*, *op. cit.*